

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

PACIFIC INDEMNITY COMPANY
15 Mountain View Road
Warren, NJ 07061-1615

Plaintiff,

v.

ALFRED KEMP, Individually and d/b/a
KEMP PLUMBING
P.O. Box 1322
Pembroke, MA 02359

and

MARTIN SANDBORG, Individually and d/b/a
SANDBORG PLUMBING AND HEATING
13 Liberty Street
Sandwich, MA 02563,

Defendants.

C.A. No.: 04-11975-RWZ
BBO# 552588

**DEFENDANT ALFRED KEMP D/B/A KEMP PLUMBING'S
MOTION IN LIMINE TO PRECLUDE TESTIMONY OF
THOMAS J. KLEM TO OFFER TESTIMONY AS TO LOCATION OF
COLD WATER VALVE BEING UNDER TARP UNDER KITCHEN
SINK POST-FIRE DUE TO SPOILIATION OF EVIDENCE**

Now comes the defendant Alfred Kemp d/b/a Kemp Plumbing ("Kemp"), and moves in limine that this Court preclude plaintiff from offering any testimony at trial regarding the location of a cold water valve, a tarp and that the valve was under a tarp beneath the kitchen sink after the fire on the grounds of spoliation of evidence. Plaintiff should be precluded from offering any testimony regarding the locations of the cold water valve, the tarp and their relationship to each other because plaintiff's expert moved

those items of evidence before Kemp was able to observe them, and plaintiff's expert did not adequately document their respective location before moving them. As a result, plaintiff, through the conduct of its expert, has placed itself in a position of having the only first-hand knowledge of an item of evidence. As grounds for this motion, Kemp relies upon the Origin and Cause Analysis report of Thomas Klem, dated July 29, 2005 and Thomas J. Klem's Expert Rebuttal dated March 23, 2006 which are attached to the affidavit of Christopher G. Betke, Esq. as Exhibits A and D (See Docket Entry No. 44), respectively, the March 7, 2006, expert report of Quinn C. Horn, Ph.D. which is attached as Exhibit D to the affidavit of John J. Ryan, Jr. (see Docket Entry No. 19), and the memorandum of law that accompanies this motion and is incorporated herein by reference.

Defendants,
Alfred Kemp, Individually and d/b/a Kemp
Plumbing
By their attorney,

/s/ Christopher G. Betke
Christopher G. Betke, BBO# 552588
Ryan, Coughlin & Betke, LLP
175 Federal Street
Boston, MA 02110
(617) 988-8050

CERTIFICATE OF SERVICE

I, Christopher G. Betke, hereby certify that on March 23, 2007, I served a copy of the within document via electronic filing to: Matthew H. Feinburg, Esq., Feinberg & Kamholtz, 125 Summer Street, 6th Floor, Boston MA 02110; Daniel Q. Harrington, Esq., Cozen & O'Connor, 1900 Market Street 3rd Floor, Philadelphia, PA 19103; Philip Tierney, Esq., Finnegan, Underwood, Ryan & Tierney, 22 Batterymarch Street, Boston, MA 02109.

/s/ Christopher G. Betke
Christopher G. Betke